United Nations S/2008/734

Security Council

Distr.: General
26 November 2008

Original: English

Third report of the Secretary-General submitted pursuant to Security Council resolution 1757 (2007)

I. Introduction

1. Under Security Council resolution 1757 (2007), I was mandated to take, in coordination, when appropriate, with the Government of Lebanon, the steps and measures necessary to establish the Special Tribunal for Lebanon in a timely manner and to report to the Security Council within 90 days and thereafter periodically on the implementation of the resolution.

2. Since my second report, dated 12 March 2008 (S/2008/173), progress has been made in a number of areas, including (a) the location of the seat of the Special Tribunal; (b) the appointment of the judges, the Prosecutor and the Registrar and the selection of the Head of the Defence Office; (c) preparatory work on the drafting of the Rules of Procedure and Evidence and other necessary legal documents; (d) the activities of the Management Committee; (e) the preparation of the budget and the recruitment of personnel; (f) the arrangements for the transition from the International Independent Investigation Commission to the Special Tribunal; (g) the fulfilment of the funding requirements; (h) the taking of all necessary security measures; and (i) the development of a communication and outreach programme.

3. The present report sets out the progress achieved thus far in the establishment of the Special Tribunal, and provides an outline of the remaining steps to be taken before it can commence functioning. On the basis of the progress so far reported by the Registrar, and following consultation by the Legal Counsel of the United Nations on my behalf with the Prime Minister of Lebanon, Fouad Siniora, and with the Commissioner of the Investigation Commission, it is envisaged that the Special Tribunal will commence functioning on 1 March 2009.

II. Location of the seat

A. Headquarters Agreement

4. In paragraph 6 of my last report, I indicated that, on 21 December 2007, representatives of the United Nations and the Netherlands signed the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Special Tribunal for Lebanon. The Agreement was then submitted by the Government of the Netherlands to Parliament for ratification. On

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26 June 2008, the Agreement was approved by the Second Chamber of the Parliament and is currently before the First Chamber. According to article 51 of the Agreement, it applies provisionally from the date of its signature, pending ratification.

B. Premises

5. As I indicated in paragraph 7 of my previous report, the Legal Counsel informed the authorities of the Netherlands on 6 December 2007 that the building identified by them and located in the urban area of The Hague was the preferred site for the Special Tribunal, subject to an agreement on its cost. On 12 December 2007, the States that had made significant contributions or pledges to the funding of the Special Tribunal approved the offer made by the authorities of the Netherlands concerning the cost of the building. On 29 April 2008, the Management Committee of the Special Tribunal agreed to the plans for the refurbishment and adaptation of the premises proposed by the Registrar of the Special Tribunal in consultation with the authorities of the Netherlands.

6. At the beginning of October 2008, work began on the building's external security measures. Interior refurbishment will start in the coming month and should be finished by early March 2009. The construction of the courtroom is expected to begin early in 2009.

III. Appointment of the judges, the Prosecutor and the Registrar and selection of the Head of the Defence Office

7. As stated in paragraph 11 of my second report, I have already finalized the selection process for both international and Lebanese judges. However, I will not proceed with their formal appointment or announce their names until all necessary security measures are in place.

8. On 14 November 2007, I appointed Daniel Bellemare as both Commissioner of the Investigation Commission and Prosecutor of the Special Tribunal. It is anticipated that he will take up his functions as Prosecutor on 1 March 2009 following my determination whether the Special Tribunal may start functioning on that date, in accordance with article 5, paragraph 2, and article 19, paragraph 2, of the annex to resolution 1757 (2007). Mr. Bellemare was appointed to both offices in order to ensure a coordinated transition from the activities of the Investigation Commission to those of the Office of the Prosecutor of the Special Tribunal.

9. On 10 March 2008, I appointed Robin Vincent as Registrar of the Special Tribunal. Mr. Vincent took office in New York on 28 April 2008, and was relocated to The Hague on 7 July 2008 to prepare the premises for occupation.

10. On 17 April 2008, a vacancy announcement for the position of Head of the Defence Office was posted and, in the interest of reaching appropriate audiences, circulated to relevant Bar Associations and to the Registrars of International Tribunals. I am now in the process of establishing a selection panel which will begin its task early in 2009. In accordance with article 13, paragraph 1, of the statute attached to the annex to resolution 1757 (2007), I will appoint the Head of the Defence Office in consultation with the President of the Special Tribunal as soon as the latter has been elected. It is envisaged that the Head of the Defence Office will

assume his or her functions as soon as possible after the Prosecutor takes office, although this may be on an "as needed" basis in the early stages.

IV. Drafting of the Rules of Procedure and Evidence and other necessary legal documents

11. In March 2008, the Legal Counsel constituted a working group of experts to undertake preparatory work on the drafting of the Rules of Procedure and Evidence prior to the judges being convened in plenary to consider the matter. From March to November 2008, the experts prepared an initial version of the Rules of Procedure and Evidence. During the same period, other necessary documents — such as directives on the assignment of defence counsel, the detention of persons awaiting trial and appeal, legal aid policies and agreements on the relocation of witnesses and on enforcement of sentences — were also drafted.

12. This preparatory work should facilitate the completion of the Rules of Procedure and Evidence, and other key documents, once the judges take office, thereby enabling the Special Tribunal to begin its judicial functions soon after it commences functioning.

V. Activities of the Management Committee

13. As mentioned in paragraph 27 of my last report, the Management Committee was established on 13 February 2008. Its function, inter alia, is to provide advice and policy direction on all non-judicial aspects of the operation of the Special Tribunal. Pursuant to article II, paragraph 1, of its terms of reference, it comprises representatives of the Government of Lebanon and the Government of the Netherlands, as well as representatives of States Members of the United Nations which are significant contributors to the Special Tribunal and are willing to assume the functions referred to in the terms of reference. Currently, the members of the Management Committee are Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and a representative of the Secretary-General as an ex officio member.

14. Since its establishment, the Management Committee has met on a regular basis and has taken decisions on the following main issues: the Special Tribunal's premises; the financial regulations; aspects of the budget; and the terms and conditions of service of judges and staff.

VI. Preparation of the budget and recruitment of personnel

15. In May 2008, the Management Committee approved a phased approach to the establishment of the budget, allowing first for the approval of the building adaptation costs, then the provision of staffing costs, followed by general operational costs. The costs for the refurbishment of the premises and the staffing table were approved on 29 April and 21 August 2008, respectively. The Management Committee is currently considering the Special Tribunal's proposed operating costs. The budget proposal before the Management Committee totals $51 million for the

first year, with anticipated expenses of approximately $65 million each for the second and third years.

16. On 6 March 2008, the Management Committee approved the terms and conditions of service of judges of the Special Tribunal, and the Staff Regulations and Rules were adopted on 7 October 2008.

17. On 15 May 2008, the Special Tribunal submitted its application for membership in the United Nations Joint Staff Pension Fund. In July 2008, the application was approved by the Pension Fund Board subject to confirmation from the Chief Executive Officer that he is satisfied that the conditions of service of the Special Tribunal are aligned to those of the United Nations common system. On 29 October 2008, the Pension Fund Board's report was reviewed by the Advisory Committee on Administrative and Budgetary Questions, and it is currently under consideration by the Fifth Committee of the General Assembly.

18. With respect to personnel, since relocating to The Hague early in July 2008, the Registrar has undertaken the process for the recruitment and appointment of core staff so that the Special Tribunal may soon become operational.

19. Additionally, in accordance with article 17, paragraph (a) of the annex to resolution 1757 (2007), and as explained below, arrangements are being made to ensure a coordinated transition from the Investigation Commission to the Office of the Prosecutor. In September 2008, a Working Group composed of members of the Registry of the Special Tribunal and of the Investigation Commission was created to facilitate a smooth transition.

VII. Arrangements for the transition from the Investigation Commission to the Special Tribunal

20. The Office of Legal Affairs of the Secretariat has been working closely with the Registrar of the Special Tribunal and the Management Committee, and liaising with the Commissioner, to ensure that there will be a coordinated transition from the activities of the Investigation Commission to those of the Office of the Prosecutor, as required under article 17 of the annex to resolution 1757 (2007). The Registrar and the Commissioner have developed plans for this transition to achieve not only efficiency and cost-effectiveness as set out in article 17 but also to ensure that any disruption to the momentum of the Commissioner's investigation resulting from the move from Beirut to The Hague is kept to a minimum.

21. To this end, it is proposed that the transition period should begin on 1 January 2009 and extend to 28 February. By 1 January, the Registrar will have in place the core staff and other essential resources to support the gradual establishment during the transition period of the other organs of the Special Tribunal. In particular, the Registrar and the Commissioner have developed plans for the phased transition from Beirut to The Hague of Investigation Commission staff, who would continue to work as Investigation Commission staff until 28 February 2009. The Registrar will ensure that those staff are able to continue to work effectively during this period to support the Commissioner's ongoing investigation. All practical arrangements will be in place for the Prosecutor to arrive on 1 March 2009 and to continue the investigation with minimum disruption.

22. In accordance with article 19 of the annex to resolution 1757 (2007), the Legal Counsel on my behalf consulted the Prime Minister of Lebanon, who confirmed that he is content for the proposed transition period starting on 1 January 2009, and the build-up in momentum so that the Special Tribunal may commence functioning on 1 March 2009, to be pursued. Also in accordance with article 19, the Legal Counsel on my behalf consulted the Commissioner, who is satisfied that, through a coordinated transition period from 1 January to 28 February 2009, the conditions will be created to enable him to maintain momentum in the investigation and to take up office in The Hague as the Prosecutor on 1 March 2009.

23. It is understood that the Commissioner, in the light of the sequence of events set out above as agreed by him, will be requesting a two-month extension of the mandate of the Investigation Commission so as to ensure that there is no gap between the end of the Investigation Commission's mandate and the commencement of the functioning of the Tribunal and to maintain the momentum of his investigation during the transition period. It is also understood that this sequence of events is subject to the approval of the extension by the Security Council.

VIII. Funding

24. On 19 July 2007, the Secretariat created a Trust Fund to receive contributions for the establishment and activities of the Special Tribunal. As agreed on 5 December 2007 by those States that had made significant contributions or pledges to the funding of the Special Tribunal, once the necessary requirements are in place, all contributions will be transferred to an account of the Special Tribunal. That transfer will enable the Special Tribunal to manage its funds directly and to function independently.

25. The total amount deposited in the Trust Fund to date is approximately $55.1 million, including interest accrued. Of that amount, $51.2 million remains available with respect to the first year budget ($48.1 million in cash, in addition to $3.1 million currently obligated for expenditure related to infrastructure items included in the first year budget). Disbursements from the Trust Fund totalling $3.9 million have been made in relation to preparatory work and the presence of an advance team in The Hague.

26. In addition, $2.3 million has been pledged for each of the second and third years of operation. On 17 November, the Legal Counsel sent a letter to Member States inviting them to make further pledges of financing for the second and third years by 30 November 2008. The Legal Counsel also held a meeting of existing donors on 24 November 2008 to call for those further pledges and for assurances of the continuing commitment of the donors to the financial viability of the Special Tribunal.

27. It is anticipated that the Management Committee will come to a decision during the week beginning 24 November 2008 on the budget for the establishment and the first 12 months of operation of the Special Tribunal. The budget proposal being considered for that period totals $51 million. On that basis, the Trust Fund has sufficient contributions in hand for the establishment of the Special Tribunal and the first 12 months of operation. Following the further efforts by the Legal Counsel referred to above to increase the amount of pledges of financing, I will make a determination regarding the commencement of the functioning of the Special

Tribunal in accordance with article 5, paragraph 2, of the annex to resolution 1757 (2007).

IX. Security measures

28. To ensure the security of the senior officials and staff of the Special Tribunal, the Registrar is putting in place appropriate security measures in close consultation with the authorities of the Netherlands and Lebanon, as well as with the Department of Safety and Security of the Secretariat.

29. In addition, as mentioned in paragraph 6 above, external security measures for the premises are currently being implemented and should be finalized by early March 2009.

X. Development of a communication and outreach programme

30. The development of a comprehensive outreach programme — the goals of which are to ensure that the Special Tribunal is regarded as an independent and impartial judicial body and to develop the trust of the population of Lebanon and the wider region — has been a priority since the adoption of Security Council resolution 1757 (2007).

31. In this regard, the following steps have been taken during the reporting period:

(a) A comprehensive communication and outreach strategy is being developed;

(b) A website for the Special Tribunal is being created;

(c) A fact sheet on the jurisdiction and organization of the Special Tribunal has been prepared in Arabic, English and French and made available to the media, non-governmental organizations and the public;

(d) A head of the public affairs and outreach section has been appointed.

XI. The way forward

32. In paragraph 34 of my first report, dated 4 September 2007 (S/2007/525), three phases were envisaged for the establishment of the Special Tribunal, namely, a preparatory phase; a start-up phase; and the commencement of the functioning.

33. In my second report, I stated that all the actions relating to the preparatory phase had been undertaken, if not completed. I also noted that the start-up phase had commenced. I now wish to inform you that the start-up phase is well under way, and the following steps have been taken:

(a) The work on the preparation of the premises has started;

(b) The process for the recruitment and appointment of staff has begun;

(c) A core unit of Registry personnel will soon be established;

(d) Measures to support the transition from the Investigation Commission to the Office of the Prosecutor are being taken;

(e) Practical arrangements for the Prosecutor to arrive in The Hague on 1 March 2009 and to continue the investigation with the minimum of disruption to the investigation will soon be finalized;

(f) Initial drafts of the Rules of Procedure and Evidence and other basic legal documents have been prepared.

34. In the light of the foregoing, I wish to report that the steps and measures necessary for the Special Tribunal to be operational are well advanced. On the basis of the current budget proposal, the contributions received are sufficient for the commencement and first year of operation of the Special Tribunal, and the Legal Counsel is engaged in ongoing efforts to increase the pledges of financing for the subsequent two years of operation. Against this background, I will be taking a decision regarding the commencement of the Special Tribunal on 1 March 2009, after a transition period starting on 1 January 2009.

XII. Final observations

35. It is my belief that the impending start of the Special Tribunal will send a strong signal that the Government of Lebanon and the United Nations remain committed to ending impunity in Lebanon. The Special Tribunal sets out to deliver the highest standards of international justice and, in that regard, I trust that all Member States will cooperate to achieve its mandate.